## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:01-CR-184-GCM

UNITED STATES OF AMERICA	)
Plaintiff,	)
v.	) ORDER
STEVEN EUGENE BAILEY (2)	)
Defendant.	)

THE MATTER before the Court is whether the Defendant, Steven Eugene Bailey, is entitled to a sentence reduction by virtue of Amendment 706 (dealing with crack cocaine) of the Sentencing Guidelines. The applicable statute authorizes such reduction if the original sentence was "based on a sentencing range that has been subsequently lowered by the Sentencing Commission." 18 U.S.C. § 3582(c)(2).

Under the original guideline range Mr. Bailey was subject to a mandatory minimum sentence of life in prison. At his sentencing hearing the government moved pursuant to 18 U.S.C. § 3553(e) and Sentencing Guidelines § 5K1.1, on the basis of Bailey's substantial assistance, to authorize the Court to depart downward from the statutory minimum sentence. Exercising that authority, this Court sentenced Bailey to 143 months. Under the amended guidelines, Bailey's Total Offense Level would drop from 35 to a 33 yielding a guideline range of 168 - 210 months.

The government argues that Bailey's sentence was determined by a deviation from the mandatory minimum, not by the sentencing guidelines. However, the government's motion for downward departure permitted this Court to impose a sentence below the statutory minimum.

Therefore, the mandatory minimum no longer constituted the bottom of the guideline range and in determining the appropriate sentence reduction below the mandatory minimum, this Court took into account, among other factors, the actual guideline range which would have been applicable but for the mandatory minimum. Bailey's actual sentence of 143 months, at least to some extent, was influenced by and "based [in part] on a sentencing range that has been subsequently lowered" within the meaning of 18 U.S.C. § 3582(c)(2).

Based on the amended guideline range, this Court imposes an amended sentence that is in proportion to the current sentence. The Court hereby imposes a sentence of **114 months**.

Defendant's motion to reduce sentence is **GRANTED**.

IT IS SO ORDERED:

Signed: August 20, 2008

Graham C. Mullen

United States District Judge